



SPEECH

Law Reviews—The Extreme Centrist Position†

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I am particularly honored to be invited to travel out east to address your annual law school banquet and speak on the role of law reviews.

In preparing this speech I was reminded of the story when Prime Minister Begin first showed President Carter the Wailing Wall. Begin explained that this was a special place where a person could pray and talk directly to God. "That's great," said Carter. "Can I go there and ask for eternal peace?" "Of course," responded Begin. "You're talking to God." "Can I ask for eternal friendship between Arab and Jew?" "Of course," said Begin again. "You're talking directly to God." "Can I ask that Israel give up the Golan Heights?" "Well," said Begin, "now you're talking to the Wall."

And so tonight I'd like to offer a few off-the-wall comments, laced with a few forced jokes.

In any profession it is always easier to draw attention if you advocate some extreme position. For those of us in the middle, it is harder to become noticed by being reasonable. And what I have to say this evening may be regarded as being merely reasonable. It is in effort to appear more radical that I have subtitled my speech "The Extreme Centrist Position." Of course, years from now, someone may look back at my remarks and, in hindsight,

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* Professor of Law, University of Illinois. I thank Eric Freyfogle, Wayne LaFave, Harry Krause, John Nowak, Richard Kaplan, Elaine Shoben, and Rick Surles, some of whom are my colleagues at early morning coffee, and off all of whom I bounced ideas concerning the roles of law reviews, and to whom I told the jokes used in this article, which jokes I used anyway. I delivered a speech, from which this article is adapted, at the annual *Indiana Law Journal* banquet on April 11, 1986.

regard them as radical. I am reminded of the story of two men riding a motorcycle. It was a very windy day, so they stopped; the man in front took his jacket off, turned it around, and buttoned it with the buttons toward the back. That way, it was harder for the wind to hit his chest. Well, the accident report read "One dead on arrival; the other died when we tried to turn his head around."¹ Hindsight sometimes offers a surprising viewpoint.

I know that it is fashionable to attack law reviews these days.² Witness, for example, the desires of the present leadership of the Association of American Law Schools to establish yet another law review to fill what they see as an important void. I am not sure that the world really *needs* another law review.

When I look at most law reviews, I see problems which, for the most part, are inevitable. Adding another journal, even a refereed one, is no panacea. Radical surgery will do no good. Maybe all the patient needs is a little more exercise and a leaner diet.

Are law reviews a failure? Is it shocking that law is the only academic discipline where almost all of the scholarly articles are published in non-refereed journals, where law students decide—sometimes mistakenly—whether to accept or reject what may become a seminal piece? And, indeed, mistakes are sometimes made. *Harvard Law Review*, for example, rejected Dean Prosser's influential article, *The Assault Upon the Citadel*.³

"See," the attackers say. "This mistake and others like it⁴ demonstrate that it is folly for law professors to be at the beck of law students. It would be a far better world if we law professors refereed our own journals." So goes the argument; I am unpersuaded.

We cannot determine if law reviews are failures unless we first know their goals. If the goal of law reviews is to change society, then we must acknowledge that they have failed. When I was a tad, it seems a thousand years ago, our review editors debated for months whether it was appropriate

1. Some of you may complain that the joke is an old one. But there are no old jokes. Just old audiences.

2. See, e.g., Nowak, *Woe Unto You Law Review!*, 27 ARIZ. L. REV. 317 (1985). I do not embrace his opinions (because I do not have both feet in the legal realist camp), but I do enjoy reading them. See also *Student-Edited Law Reviews, Symposium*, 36 J. LEGAL EDUC. 1, 1-23 (1986) (articles by Roger Cranton, Paul Carrington, John Kester, John Henry Schlegel, & Elyce Zenoff).

3. Prosser, *The Assault Upon the Citadel (Strict Liability to the Consumer)*, 69 YALE L.J. 1099 (1960). This article has become one of the most cited articles in law review history. See GREAT AMERICAN LAW REVIEWS 26 (R. Berring ed. 1984); Shapiro, *The Most-Cited Law Review Articles*, 73 CALIF. L. REV. 1540, 1549 (1985). Some former Harvard editors told me that Prosser "resisted edit." The editors thought that Prosser had too many footnotes (a rare complaint for a law review); Dean Prosser disagreed, so he took his article elsewhere.

4. In the 1950's most Harvard editors mistakenly thought that it was "a publication blunder to have the Hart-Fuller debate." D'Amato, *Whither Jurisprudence?*, 6 CARDOZO L. REV. 971, 982 (1985). Even I recognize the debate as a classic of jurisprudence.

to publish, in the law review, a statement of our opposition to the war in Vietnam. We talked almost endlessly. And then, after so many evenings of discussion that we were certain that no more souls were to be saved, we finally voted to publish such a statement. We did,⁵ but to the genuine surprise of some of my colleagues, the war did not end!⁶ And when the war ended quite a few years later, it had nothing to do with our statement. In fact, a few months after the statement was published, at the end of my second year of law school, we had a banquet and some of the speeches made humorous references to our anti-war statement. Some alums were sitting at my table and—although they personally subscribed to the law review—they had no idea to what the references referred. Our alumni subscribers had not even read the anti-war statement.

A law review is hardly influential if it is not read.⁷ But to concede that law reviews are not usually devoured by a hungry audience the moment that the latest issues hit the streets is not to concede all that much. The typical issue of a law review is not like the latest issue of *Time* or *Newsweek*. The law review is not meant to be read immediately. Each issue is really a book, a collection of essays and research meant to be filed for later use. Months, maybe years later, a researcher in a particular area of law will be overjoyed to discover that a law review student note or lead article is right on point. The review issue (or more likely the bound volume) will then be taken off the shelf and studied.

Law reviews, in short, are not influential, at least not in the sense that Woody Allen's movie, *Annie Hall*, influenced women's fashions for the next nine to twelve months. Yet, law reviews have some impact. Judges, for example, often cite the views of commentators and note whether the weight of law review commentary is critical of, or favorable to, earlier decisions.⁸ Professors and practitioners often turn to reviews to keep abreast of recent developments and to learn the views of thoughtful legal scholars. Student-run law reviews do have some influence, an influence that they had to earn. It was around 1910 that Justice Holmes "admonished an attorney appearing before the Supreme Court to avoid citing as authority 'the work of boys.' "

5. *With the Editors*, 82 HARV. L. REV. vi-viii (Jan. 1969).

6. I do honestly recall that I was not surprised. I thought that the purpose of publishing our statement (another pebble in the mountain of opposition) was simply to publish it, to make our views known, to take a stand even though the rest of the world neither knew nor cared what we thought.

7. Of course, any unread article may still be cited. And an article may be cited simply because it is part of the "old boy" network. See Delgado, *The Imperial Scholar: Reflections on a Review of Civil Rights Literature*, 132 U. PA. L. REV. 561 (1984).

8. See, e.g., *McCray v. Abrams*, 750 F.2d 1113, 1120-21 (2d Cir. 1984). See also *Cousins v. Wigoda*, 419 U.S. 477, 483 n.4 (1975). Compare *id.* at 492 (dissenting opinion, attacking majority's footnote 4). See also *Erie R.R. v. Tompkins*, 304 U.S. 64, 72-73 (1938) (relying on various law review articles, in particular, Warren, *New Light on the History of the Federal Judiciary Act of 1789*, 37 HARV. L. REV. 49 (1923)).

It was not until 1917 that a member of the United States Supreme Court made mention of a law review article in a written opinion.⁹ After World War I the law reviews' influence grew rapidly.¹⁰

Yet I do not justify law reviews by noting that they have some influence, at least at the margin.¹¹ This influence is merely subsidiary to the law reviews' main goal: training future lawyers, judges, and academics. Law review editing and writing provide valuable experience for law students. This training alone justifies the reviews' existence.

Some people even say that the advantage to the students of law review experience would be just as great if the final articles and notes were never even published. In my mind, however, publication is an important, final step in the learning process. There is something special when a student learns

9. J. JOHNSON, *AMERICAN LEGAL CULTURE, 1908-40*, 62 (1981). The case was *Adams v. Tanner*, 244 U.S. 590 (1917), where Justice Brandeis cited several articles in his dissent. See 244 U.S. at 606 n.9, 613 n.23, & 615 n.25.

10. Chief Justice Hughes, in a commentary on law reviews, noted that:

[T]he quality of the leading reviews . . . has won for them wide influence in giving direction to professional thought and thus in shaping the law itself as announced by the courts. . . . [I]n confronting any serious problem, a wide awake and careful judge will at once look to see if the subject has been discussed, or the authorities collated and analyzed, in a good law periodical.

Hughes, *Forward*, 50 *YALE L.J.* 737 (1941); Warren, *The Northwestern University Law Review Begins its Fifty-First Year of Publications*, 51 *Nw. U.L. REV.* 1 (1956) (commentary by Chief Justice Warren, noting that "law reviews perform the indispensable function of criticism for an important institution [the judiciary]" and they also "help make the future path of the law"); see also Newland, *Legal Periodicals and the United States Supreme Court*, 3 *MIDWEST J. POL. SCI.* 58, 62 (1959); Newland, *The Supreme Court and Legal Writing: Learned Journals or Vehicles of an Anti-Antitrust Lobby*, 48 *GEO. L.J.* 105, 127 (1959); Radin, *Sources of Law—New and Old*, 1 *So. CAL. L. REV.* 411, 418-21 (1928); see generally P. MURPHY, *THE MEANING OF FREEDOM OF SPEECH: FIRST AMENDMENT FREEDOMS FROM WILSON TO FDR 264-65, 269-70* (1972).

11. I do not denigrate the influence of law reviews by noting that their influence is marginal. Economists have known for years that what happens at the margin is the most important and most interesting.

John Kennedy used to tell the story of how the obscure London correspondent of the *New York Herald* (his name was Karl Marx) begged Horace Greeley, the eccentric head of that newspaper, see R. ROTUNDA, *THE POLITICS OF LANGUAGE 35-37* (1986), for an increase of his meager salary of \$5 per installment. Marx and Engels thought that this small salary, small even in those days, was the "lousiest petty bourgeois cheating." But Greeley and his managing editor, Charles Dana, refused. When the cutthroat capitalists turned a deaf ear to all of Marx's financial appeals, Marx "looked around for other means of livelihood and fame, and eventually terminated his relationship with the *Tribune* and devoted his talents full time to the cause that would bequeath the world the seeds of Leninism, Stalinism, revolution and the Cold War. If only the capitalist *New York newspaper* had treated him more kindly, if only Marx had remained a foreign correspondent, history might have been different . . ." *THE KENNEDY WIT 35* (B. Adler ed. 1964). So you see what change a small increase in Marx's salary might have brought. Marginal change is very important.

Note that in the previous paragraph I added a gratuitous citation to one of my recent publications. I merely follow the typical style requirement of some law review authors who cite their previous writings, whether necessary or not.

that a work will be published with his or her name attached. The prospect of publication forces the student to engage in a little extra effort, to be a little more careful. Even then, some mistakes may creep into the final version. Only one who has engaged in the publication process can appreciate the difficulty of the whole endeavor. Judge Henry de Bracton, over 700 years ago in the first chapter of his treatise on English law, asked the reader "if he should find anything superfluous or erroneously stated in this work, to correct or amend it, or to pass it over with eyes half closed, since to retain everything in memory, and to make no mistakes, is an attribute of God rather than of man."¹² Any former law review editor can sympathize with Bracton's plea, uttered long before word processors and Xerox machines. Anyone who had engaged in efforts at publication has put in that extra effort and should become more understanding and tolerant of the toils of others similarly engaged.

From the beginning, the primary purpose of student-run law reviews was to train lawyers.¹³ And the training has been remarkably successful. Law firms woo those with law review experience. Even in the era where law review selection is often not only the product of class rank, law firms still lavish special attention on those with law review experience.

There is the story of two young campers in the Alaskan forests. Suddenly, in the middle of the night, one woke the other up and whispered, "there is a killer bear in our camp." The second camper then quietly and quickly put on his running shoes. "Are you crazy?" said the first camper. "You can't outrun a bear." The second camper replied, "I don't have to outrun a bear. I just have to outrun you."

Well, the outside world, like the law school world, is a little like the bear and the two campers. It's graded on a curve. And those with law review experience often have a little extra edge, a little better running shoe. But do not get a swelled head. It is possible never to be on law review and somehow still survive, as a practicing lawyer or as a first rate scholar. Zachariah Chafee, for example, was both. He turned down law review,¹⁴

12. H. DE BRACON, 2 DE LEGIBUS ET CONSUEUDINIBUS ANGLIA 20 (G. Woodbine ed. 1915) (circa 1250). Subsequently, Tottell, in 1569, and Sir Travers Twiss, in the late 1870's and early 1880's, published new editions. To Bracton's inevitable errors, Twiss added his fair share. See Scrutton, *Roman Law in Bracton*, 1 LAW Q. REV. 425 (1885).

13. See, e.g., A. SUTHERLAND, *THE LAW AT HARVARD: A HISTORY OF IDEAS AND MEN, 1817-1967*, at 197-98 (1967). The first issue of *Harvard Law Review* had more modest goals: "to set forth work done in the school with which we are connected, to furnish news of interest to those who have studied law at Cambridge, and to give, if possible, to all who are interested in the subject of legal education, some idea of what is done under the Harvard system of instruction." Note, 1 HARV. L. REV. 35 (1887). See also Havighurst, *Law Reviews and Legal Education*, 51 NW. U.L. REV. 22, 24 (1956) ("Where most periodicals are published primarily in order that they may be read, law reviews are published primarily in order that they may be written.")

14. A. SUTHERLAND, *supra* note 13, at 251. The "prospect bored him." Others, however, argued that all students should have law review experience. See Westwood, *The Law Review Should Become the Law School*, 31 VA. L. REV. 913 (1945).

and yet his scholarly writings have influenced first amendment thought since before World War I.¹⁵

I mentioned earlier that the prime purpose of law review is to train the review editors. Yet our non-refereed journals have offered other advantages which have benefited law professors. Law professors have had the choice of contributing to refereed journals or to student-run law reviews. At the time the student-run law reviews were formed, professional law journals "managed by lawyers of experience" already existed.¹⁶ In 1866 John Codman Ropes and John Chipman Gray founded the *American Law Review*, published by Little, Brown and Company. In 1870 Oliver Wendell Holmes, Jr., became one of its editors. Notwithstanding the quality of editors like these, the competition from the student-run journals has driven out many of the older journals. There are some faculty-run journals today, but the student-run journals like yours are among the most influential.¹⁷

Why is that? Well, if you have refereed journals, you need referees. But law professors do not really receive gold stars for being referees; we achieve academic prominence because of what we write, not because of what we read. And the use of referees builds into the system a great amount of delay before the article is accepted. My friends in other disciplines sometimes wait an eternity before the referee responds with an evaluation of their articles. A few years ago, when I submitted a manuscript to a university press, one of the presses kept me waiting for over one year for the referee's evaluation. I finally gave up and submitted the manuscript to another publisher, who accepted it. Then, it took nearly another year for the book to get into print. We often complain (and rightly so) about the delays in law review publication. But the refereed press almost invented delay. Such delay should be featured in a modern update of *Bleak House: The Sequel*.¹⁸ While some people in legal academia moan about the lack of a refereed press, our academic colleagues who write in refereed journals complain with equal or greater intensity about their refereed experience.¹⁹

15. See 3 R. ROTUNDA, J. NOWAK, & J. YOUNG, TREATISE ON CONSTITUTIONAL LAW: SUBSTANCE AND PROCEDURE § 20.5 (1986).

16. Note, *supra* note 13, at 35.

17. Maru, *Measuring the Impact of Legal Periodicals*, 1 AM. B. FOUND. RES. J. 227 (1976). See *id.* at 243 (Table 3, "Rank Order by Impact Factor"). Of the top ten law reviews, only two are faculty-run, the SUPREME COURT REVIEW and LAW AND CONTEMPORARY PROBLEMS. As to these two, many of the articles are often solicited. The use of outside referees is rare or non-existent.

18. I have no aversion to footnotes in general, but I do not believe in unnecessary footnotes. Thus there is no footnote at this point to Dickens, or to the original publication date of *Bleak House*.

19. *E.g.*, Strasburger, *Righting Medical Writing*, 254 J. A.M.A., Oct. 4, 1985, at 1789, 1790 ("change peer review").

Evidence that law professors do not perceive benefit in being referees is supplied by Harvard Law School's recent experience. Harvard decided to start a new, faculty-run law review so that the faculty members would not be at the whim and caprice of *Harvard Law Review* student

For all the problems with the non-refereed press, it has allowed professors to publish quickly. And it has allowed prolific professors to publish even more. To be sure, the quality of law review writing is uneven. But the same complaint is made of the refereed journals,²⁰ because the judgment of the referees is often mistaken. But for me to come to Indiana to complain about referees is like carrying coals to Newcastle.

As for law reviews, the marketplace seems fit to judge good articles. Judges seem to be able to find the articles of merit, and others, such as law review commentators, have little trouble making similar value judgments. A writer's law school colleagues, including the Dean, also make evaluations of the published work.²¹ Whether the disciplines are dominated by refereed or non-refereed journals, it is generally agreed that the best measure of an article's value and influence is how often it is cited; the journal in which it is published is not the key.²²

The students who choose which articles to publish perform only one step in the process by which it is decided whether the article has merit. When *Harvard Law Review* rejected Prosser's *The Assault Upon the Citadel*, the mistake was only Harvard's; Prosser did not suffer. He merely published in another, equally prestigious, law review and proceeded to change the law of torts.²³ The competition from other journals gave him plenty of choice. The readers of his article—not the students—decided that it was a great

editors. The law school chose Professor Laurence Tribe to be the faculty editor. But after awhile, Tribe decided to resign because the job took too much time. He said that "he hadn't realized that the U.S. Constitution's bicentennial celebration would present opportunities to deliver lectures and participate in symposiums on constitutional law." Nat'l L.J., July 21, 1986, at 4. The editor-in-chief of the student-run law review at Harvard noted: "I find it a little surprising at this late date that Professor Tribe has decided his other scholarly work [should take precedence]. It is not a sign of the strength of the enterprise." *Id.* Tribe had earlier claimed that the faculty-run law journal would publish articles which were shorter, with fewer footnotes, and "more provocative." A student responded that the rival publication was "the Faculty 'Lite' Law Journal—less filling, tastes great." Wall Street J., May 28, 1986, at 33, col. 6.

20. See Strasburger, *supra* note 19, at 1789, 1790 (arguing that academic physicians publish too much of low quality).

The National Institute of Health researchers demonstrated in the report (the Stewart-Feder Study) that John Darsee, a young cardiology researcher, fabricated research for dozens of papers, abstracts, book chapters, letters, and reviews. Many of Darsee's coauthors "had not even read the material for which they were claiming authorship . . ." Some of the fabrications were obvious, but published nonetheless (e.g., a case study of a family's heart attack history claimed that a male member of the family had fathered four children by the time he had reached seventeen years of age, with the first child being born when the alleged father was eight years old). See Champaign-Urbana News Gazette, Sept. 27, 1986, at A-3.

21. See Siegfried & Scott, *The Determinants of Academic Lawyers' Salaries and Non-Institutional Professional Income*, 28 J. LEGAL. EDUC. 281 (1977) (study showing that law schools carefully evaluate articles for purpose of salary determination).

22. See, e.g., J. COLE & S. COLE, SOCIAL STRATIFICATION IN SCIENCE 35 (1973); E. GARFIELD, CITATION INDEXING—ITS THEORY AND APPLICATION IN SCIENCE, TECHNOLOGY, AND HUMANITIES 241 (1979); Shapiro, *supra* note 3, at 1544-45; Virgo, *A Statistical Procedure for Evaluating the Importance of Scientific Papers*, 47 LIBR. Q. 415 (1977).

23. See *supra* note 3.

piece. Society did not suffer because a few students at one law school made a mistake.

I suppose it is neater to have all the great articles in one journal. But I doubt that will ever happen, whether the journal is published by the AALS, the American Bar Association, or some other group. We all do not agree what is a great article. My view that a piece is creative may be countered with another's conclusion that it is naive. Time will be the final judge. There is no reason to believe that refereed journals will better ferret out the good from the bad. Indeed, a study a few years ago was very revealing. A researcher retyped Jerry Kosinski's novel, *Steps*, and submitted the manuscripts to over a dozen New York publishers. In 1969 this novel had won the National Book Award as the best novel of that year. But, in 1977, all of the publishers rejected it as inferior. Only one editor thought it resembled Kosinski's style, but he thought that it was an inferior imitation.²⁴ On a more scholarly level, several researchers selected a dozen articles, changed the titles, and changed the names of the well-known authors to fake names. The researchers then resubmitted the articles to the same journals which had published them only one and one-half to two and one-half years earlier. The journals, and their two referees per article, rejected eight of the twelve on the grounds of poor scholarship and poor writing. They did not even realize that these eight articles had been earlier published under different names.²⁵ Referees make mistakes too. The referees for the proposed AALS law review will probably not be immune from this iron law of nature. The peer review which counts is the peer evaluation which occurs after the article is published.

Even if we could not agree as to what are the best articles and notes, we might have better luck in identifying the worst. Some articles, all would agree, add little to the corpus of legal knowledge. Why kill so many trees to publish them? But these articles serve a purpose. We have almost 200 law schools and virtually each of them has at least one law review. Students benefit not only from writing their notes; they also need articles to be submitted in order to exercise their editing skills. The submissions are more

24. See 113 TIME 94, 96 (Feb. 19, 1979); Strasburger, *supra* note 19. See also D. FROST & M. DEAKIN, DAVID FROST'S BOOK OF THE WORLD'S WORST DECISIONS ix (1983), where an editor of the San Francisco Examiner wrote Rudyard Kipling, who hoped to have the Examiner publish his articles: "I'm sorry, Mr. Kipling, but you just don't know how to use the English language." William Styron, the McGraw-Hill editor, rejected Thor Heyerdahl's book, KON-TIKI, with the comment: "this is a long, solemn, tedious Pacific voyage . . ." C. CERF & V. NAVASKY, THE EXPERTS SPEAK 160 (1984).

25. Peters & Ceci, *Peer-Review Practices of Psychological Journals*, 5 BEHAV. BRAIN SCI. 187 (1982).

A recent survey by the American Council of Learned Societies reported that large majorities of scholars in seven broad disciplines thought that "the peer-review system for deciding what gets published in scholarly journals is biased in favor of 'established' researchers, scholars from prestigious institutions, and those who use 'currently fashionable approaches' to their subjects." 42 The Chronicle of Higher Education, Aug. 6, 1986, at 1, col. 2.

fodder in the effort to train good lawyers. In the process, some of this fodder becomes good, and even excellent, legal scholarship.

Despite its frequent lapses of quality, the present system, in my mind, also has its virtues for the authors who submit the manuscripts. Studies show that the more prolific one is, the more likely it is that the author will eventually write a truly significant work. Thomas Edison invented a lot of worthless gadgets. But once in a while he hit the nail on the head. That type of genius is much more typical than the person who says that he or she will never write unless the piece is "seminal" (or "ovular"). That often means that the speaker will never write, period, but is too embarrassed to say so directly.²⁶ So, some of this fodder for law review editors turns into good legal scholarship. And, the process of writing aids the law professor as well. The law review writing exercise—even if the product is not read with the same degree of interest aroused by *People Magazine*—helps make the law professors more knowledgeable teachers. And that helps the students, even those not on law review.

I doubt that the new AALS law review will change the status quo substantially. The student-run law reviews will still get their fair share of significant articles. Law professors will probably still not receive any scholarly distinction or recognition by selecting or editing other professors' articles. And the delay in the referee process will disadvantage any refereed journal. There is a danger that a journal like the proposed AALS law review will someday be captured by a particular group, such as the Critical Legal Studies movement, which will impose its views as to what constitutes correct legal scholarship. But, as long as there are the student-run law reviews, there will be sufficient outlets for other types of legal scholarship.

Now, while I have, on the whole, supported student-run law reviews, I warned you earlier that I was adopting the extreme centrist position. Law reviews are hardly without fault. As next year's editors take on the mantle of their predecessors, heed a few simple words of advice.

First, the typical law faculty is an excellent resource to aid a law review. I know that law review editors value their independence, but you can obtain aid without giving the professors a veto. You should seek out professorial advice in deciding which articles to accept and which student work to publish. You are more likely to come out with a better product.

Secondly, publication delays are costly, even when your excuse for delay is that you want the magazine to be perfect. Of course, you want a perfect product; you also want it to come out on time. You owe that to your contributors, who don't want to see their writings pre-empted by other authors or made stale by the passage of time. And, you owe it to your successors, who have to make up for your mistakes. The *Indiana Law Journal*

26. Cf. Ellman, *A Comparison of Law Faculty Production in Leading Law Reviews*, 33 J. LEGAL EDUC. 681 (1983).

should be proud of the great effort it has made this year to be timely in publication. Don't lose it. When law reviews dally, they give up one of their big advantages over the refereed journals.

Thirdly, law review editors should be a little less officious in dealing with the people they edit. I once had an article accepted and was told to wait for the edited version. About two months passed with no word. Finally, the editor sent back a completely rewritten piece which converted my article attacking an S.E.C. policy into a practitioner-oriented article advising lawyers how to comply with the S.E.C. position. The last instructions from the editor were to "write the conclusion within one week and return." I called the editor and told her that she had misunderstood the purpose of my article, and that her deadline was unrealistic. Perhaps I could have written the introduction to the article so that its purpose would be clearer. That was my fault (and, in fact, that is what I did instead of working on the conclusion). But I was alive during the two months during which she had edited the article in silence. She could have called me. Would that not have been simpler? The outside contributor is usually not dead. Tell him or her about the major changes before you make them. And it would also help if you highlight for the writer all the changes, even the minor ones. The contributor does not like to receive a hundred page manuscript with no clue as to where the changes have been made.

And law review editors should focus on style. Scholarly legal writing need not be deadly. The prose should not be torture to wade through. Nor must every article be long.

Let me read for you a sentence from a recent law review. The sentence is not exactly from Ernest Hemingway:

This dissection of human nature into discrete aspects, and the relegation of these aspects to separate spheres of human activity, represents an attempt to restructure the traditional liberal democratic one-dimensional view of man as a Hobbesian dwarf into a view of man as a schizoid personality that is a combination of the Hobbesian dwarf in the public sphere and Alan Alda in the private sphere.²⁷

On the other hand, the pendulum does not have to swing from pompous rhetoric to self-centered high school slang, or what my colleague John Nowak calls "Yuppie" style. Consider this second excerpt:

I decided to participate in moot court despite my better judgment. I felt compelled to take advantage of the opportunity for practical experience even though I had no intention of becoming a litigator. It was something everyone told me I should do because it would be good for me—like taking foul tasting medicine when you're sick. So I played along and played diligently. . . . I put on my little pumps, nylons, and straight grey skirt. I adopted the I-can-act-as-though-legal-rules-make-sense-and-are-not-hopelessly-indeterminate mode. I argued the case in the best "male voice" I could muster.

27. The citation really exists, but is omitted here.

In my performance evaluation, however, the chief justice ("Mr. Moot Court") focused not only on the substance and delivery of my legal argument, but on my failure to wear a suit. . . . This experience blew me away. I could not believe that success in moot court depended on total conformance to a fossilized standard of appearance and conduct.²⁸

Now surely it is not asking too much for a law review editor to steer between these two excerpts and follow some traditional rules of good style.

What are these rules of good style? First, style need not be pompous. This writer believes in the use of the first person.²⁹ Also, avoid the unnecessary use of long words, or as I prefer to say, recalcitrate sesquipedalianism. Don't use nouns as verbs; that impacts your style. Eschew prolixity, don't make things unnecessarily long, and avoid repeating yourself. When dangling, watch your participles. Make each pronoun agree with their antecedent, just as verbs has to agree with its subjects. It is important to always try to never split infinitives. And the truly good writer is always especially careful to virtually eliminate the too-frequent and excessive use of many adverbs. Don't use hyperbole; not one writer in a million can use it effectively. Avoid cliches like the plague. Mixed metaphors are a pain in the neck and should be thrown out the window. Methinks that it behooves the writer to avoid archaic expressions. And always proofread your work to see if you any words out.

In law reviews the generational memory is quite short, because every two years there is a completely new group of law review students. About every ten years the law review debates whether it should focus more or less on the local law of the jurisdiction in which it is situated. About every five years, on average, it debates selection procedures. Every other year the editors debate the organization of the board and the duties of that position. And about every year, the new board of editors vows that it will not be as overbearing as the last board. The new editors promise that they will edit the outside authors and the second year students with a lighter hand. But, after a while, the new board is viewed by the new second year students as overbearing as Attila the Hun. The new editors become drunk with power. Try not to become too drunk.³⁰

28. *Id.*

29. This rule and the following ones are adapted from an undated, anonymous, and frequently photocopied list entitled "How to Achieve a Polished Legal Style." See also Trigg, *Editorial: Grammar*, 42 *PHYSICAL REV. LETTERS* 747, 747-48 (1979).

30. Remember, with a little effort you can really change the law review. One last story to illustrate this point. A young widow complained to the funeral director that her late husband was not dressed properly for the wake. "Look at him," she cried. "He has a kelly green suit and a garish tie. You got the instructions all wrong." "Don't worry," said the funeral director. "I will take care of the problem. I am sorry about the mistake." "But," said the widow, "the funeral will begin in fifteen minutes. The people are almost here. How can you do anything?" "Trust me," said the funeral director. "It is no big undertaking."

Well, the woman left, and when the funeral started less than fifteen minutes later, the deceased was dressed in a beautiful silk suit, white on white shirt, and so on. A few months later, when the widow collected herself, she asked the funeral director, "How did you do it? I was really impressed." "Easy," he replied. "I just changed heads." And so, it is sometimes easy to make dramatic changes.

